

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
Civil Action No. 1:22-cv-00738-WO-JEP

MARSHA FRYE,

Plaintiff,

v.

HARTFORD LIFE AND ACCIDENT  
INSURANCE COMPANY,

Defendant.

**HARTFORD LIFE AND  
ACCIDENT INSURANCE  
COMPANY’S MOTION TO  
PARTIALLY DISMISS  
PLAINTIFF’S COMPLAINT**

Hartford Life and Accident Insurance Company (“Hartford”) submits this motion to partially dismiss Plaintiff’s Complaint pursuant to Fed. R. Civ. P. 12(b)(6) because Count III of the Complaint fails to state a plausible claim for statutory penalties under 29 U.S.C. § 1132(c)(1). For grounds, Hartford shows the Court the following:

1. Plaintiff brought this action seeking Supplemental Life Insurance benefits under an employee welfare benefit plan governed by the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), 29 U.S.C. § 1001, *et seq.*

2. Plaintiff’s Complaint is cast in three counts: Count I seeks Supplemental Life Insurance Benefits under 29 U.S.C. § 1132(a)(1)(B) (Complaint, Doc. 1-4, ¶¶ 23-30); Count II seeks civil damages under 26 U.S.C. § 7434 (*Id.* at ¶¶ 32-39); and Count III seeks statutory penalties under 29 U.S.C. § 1132(e)(1). (*Id.* at ¶¶ 41-46.)

3. Taking all allegations of the Complaint as true for purposes of a Rule 12(b)(6) motion, Count III fails to state a plausible claim for statutory penalties against

Hartford upon which relief can be granted. Specifically:

- (a) Plaintiff's Complaint fails to state a claim for statutory penalties as a matter of law because Plaintiff did not request documents or information from the appropriate entity (*i.e.* the Plan Administrator);
- (b) Hartford is not the Plan Administrator within the meaning of 29 U.S.C. § 1132(c)(1) and is therefore not subject to the statutory penalties that section authorizes; and
- (c) An alleged failure to produce claim documentation and other materials requested by Plaintiff cannot subject Hartford to penalties under § 1132(c)(1) because those documents are not enumerated in § 1024(b)(4).

4. In support of its motion to partially dismiss plaintiff's complaint, Hartford tenders and relies on:

- (a) Plaintiff's Complaint, with exhibits;
- (b) Exhibit 1 – Booklet-Certificate of Insurance;
- (c) All pleadings and documents of record; and
- (d) Hartford's brief in support filed herewith.

WHEREFORE, Defendant Hartford Life and Accident Insurance Company prays that its motion to partially dismiss Plaintiff's Complaint be granted, and that Count III of the Complaint be dismissed with prejudice.

Respectfully submitted, this 14th day of September, 2022.

WOMBLE BOND DICKINSON (US) LLP

/s/ Sonny S. Haynes

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*Attorney for Hartford Life and Accident  
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**CERTIFICATE OF SERVICE**

This is to certify that on September 14, 2022, the undersigned attorney did file the foregoing document using this Court's CM/ECF system, which will automatically give notice via electronic means to the following attorney of record:

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